

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

ABBOTT LABORATORIES and  
ABBOTT CARDIOVASCULAR  
SYSTEMS, INC.,

Plaintiffs,

v.

JOHNSON AND JOHNSON, INC. and  
CORDIS CORPORATION,

Defendants.

C. A. No. 06-613-SLR

**PLAINTIFFS' RESPONSE TO DEFENDANTS' MOTION TO  
AMEND THEIR COMBINED ANSWERING BRIEF IN  
OPPOSITION TO PLAINTIFFS' MOTIONS**

Plaintiffs do not oppose the motion by Defendants to amend their combined answering brief (D.I. 62). Plaintiffs respectfully submit, however, that this Court should disregard the Raffield Declarations and the attachments thereto (D.I. 58, Ex. 1; D.I. 59, Ex. 1), particularly the letters from deputy clerks from the District of New Jersey (D.I. 58, Ex. B to Ex. 1; D.I. 59, Ex. A to Ex. 1), for the reasons set forth in Plaintiffs' combined reply (D.I. 63, Section IV.D).

Before Defendants filed their motion to amend, Plaintiffs informed Defendants that Plaintiffs would not oppose Defendants' motion, even though Plaintiffs object to both Raffield declarations. (D.I. 63, Ex. 34.) Specifically, Plaintiffs stated the following to Defendants:

Abbott objects to both Raffield declarations. Abbott believes that both declarations should not be considered by the Court. In particular, Abbott objects to the letters from deputy clerks in NJ. As we previously informed you, we believe these letters were obtained via improper ex parte

communications. Further, the second letter apparently was obtained via ex parte communications after I specifically told Paul Veith that we objected to such communications. Despite our objection, you engaged in further ex parte communications with the deputy clerks.

That said, we will stipulate that you may file the second Raffield declaration in support of your response brief filed on June 13 and may supplement your brief on the following conditions:

- (1) your supplemental filing should be filed and served on us (electronically) by noon tomorrow [before Abbott's combined reply brief was due]
- (2) by noon tomorrow, you should provide us with a copy of all written communications with the court or the clerk's office relating to the letters from the deputy clerks and a detailed log of all communication (written and oral) with the court or the clerk's office relating to the letters from the deputy clerks
- (3) the supplement to the brief should state:

"Defendants hereby submit the Supplemental Declaration of Gale Raffield ("Supplemental Raffield Declaration") in support of Defendants' Combined Answering Brief filed on June 13 (D.I. 58). Defendants request that the Court consider the Supplemental Raffield Declaration in conjunction with Defendants' arguments on page INSERT in their Answering Brief. Defendants previously submitted the Declaration of Gale Raffield ("Original Raffield Declaration") as Exhibit INSERT in support of their Answering Brief.

Plaintiffs have objected to both Raffield Declarations. Plaintiffs contend that neither Raffield Declaration should be considered by the Court. Plaintiffs will address the bases for their objections in their reply brief to be filed on June 22."

Even if you decide not to make a supplemental filing, we request that you provide the information in item (2) by noon tomorrow.

(D.I. 63, Ex. 34 (emphasis added).) Contrary to Defendants' contention in its motion (D.I. 62 at 2), Plaintiffs' requests were not unreasonable under the circumstances. Notably, Defendants have refused to disclose their *ex parte* communications (written or oral) with the deputy clerks in New Jersey.

In view of the foregoing, Plaintiffs object to both Raffield declarations and respectfully submit that they should not be considered by this Court. Notwithstanding these objections, Plaintiffs do not oppose Defendants' motion to amend their combined answering brief (D.I. 62).

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Date: June 28, 2007

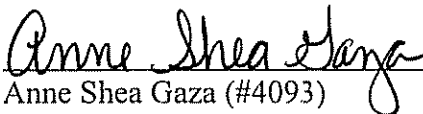
**CERTIFICATE OF SERVICE**

I hereby certify that on June 28, 2007 I caused to be served by electronic mail and hand delivery the foregoing document and electronically filed the same with the Clerk of Court using CM/ECF which will send notification of such filing(s) to the following:

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I hereby certify that on June 28, 2007, I caused to be sent by electronic mail and Federal Express the foregoing document to the following non-registered participant:

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